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13 Attorneys for Defendant ARISTA NETWORKS, INC.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 CISCO SYSTEMS, INC.,
18

19 Plaintiff,

20 v.

21 ARISTA NETWORKS, INC.,

22 Defendant.

Case No. 5:14-cv-05344-BLF (NC)

**DECLARATION OF RYAN WONG IN
SUPPORT OF PLAINTIFF CISCO
SYSTEMS, INC.'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
CONFIDENTIAL INFORMATION IN
CISCO'S MOTIONS *IN LIMINE*
(ECF NO. 530)**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 I, RYAN K. WONG, declare:

2 1. I am an attorney licensed to practice law in the State of California and am an
3 associate with the law firm of Keker & Van Nest LLP, located at 633 Battery Street,
4 San Francisco, California 94111, counsel for Defendant Arista Networks, Inc. (“Arista”) in the
5 above-referenced action. Unless otherwise stated, the facts I set forth in this declaration are based
6 on my personal knowledge or knowledge I obtained through my review of corporate records or
7 other investigation. If called to testify as a witness, I could and would testify competently to such
8 facts under oath.

9 2. I submit this declaration in support of the Administrative Motion to File Under
10 Seal Confidential Information in Cisco’s Motions *In Limine* filed by Plaintiff Cisco Systems, Inc.
11 (“Cisco”) on September 16, 2016 (ECF 426). I have reviewed Cisco’s Motion to Seal and the
12 Civil Local Rules of this Court governing such motions, and submit this supporting declaration
13 under Civil L.R. 79-5(e).

14 3. Cisco’s Motion to Seal seeks to file under seal documents and information
15 submitted in support of several *in limine* motions, which are non-dispositive motions. Because
16 Cisco’s Motion to Seal relates to non-dispositive motions, the documents and information that the
17 parties request to file under seal are **not** subject to a strong presumption of public access. *See*
18 *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). Rather, the “good
19 cause” standard of Rule 26(c) of the Federal Rules of Civil Procedure applies to the material that
20 Cisco’s Motion to Seal seeks to withhold from public view. *Id.* at 1179. Civil Local Rule 79-5
21 further requires that a party seeking to seal information and documents “establish[] that the
22 document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to
23 protection under the law.” Civil L.R. 79-5(b). The sealing request must also “be narrowly
24 tailored to seek sealing only of sealable material.” *Id.* I submit this declaration to provide
25 additional facts in support of Cisco’s Motion to Seal, and to provide facts establishing that the
26 “good cause” standard has been met for materials that Arista seeks to file under seal.

27 4. For purposes of a motion to seal, I understand that a “trade secret” is “any formula,
28 pattern, device or compilation of information which is used in one’s business, and which gives

1 him an opportunity to obtain an advantage over competitors who do not know or use it.” *See In*
 2 *re Elec. Arts, Inc.*, 298 F. App’x 568, 569–70 (9th Cir. 2008) (nonprecedential) (quoting
 3 Restatement (First) of Torts § 757 cmt. b (1939)) (applying the Restatement’s definition of trade
 4 secret in the record-sealing context); *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972)
 5 (adopting the Restatement’s definition of trade secret).

6 5. I further understand that good cause—indeed, compelling reasons—may exist to
 7 file materials under seal when, for example, court filings could be used for improper purposes,
 8 such as “to gratify private spite, promote public scandal, circulate libelous statements, or release
 9 trade secrets.” *Kamakana*, 447 F.3d at 1178–79 (citation omitted). I further understand that good
 10 cause and compelling reasons may exist where court filings contain or discuss confidential source
 11 code, *see Apple, Inc. v. Samsung Electronics Co., Ltd.*, No. 11-cv-1846, D.I. 2190 at *3 (Dec. 10,
 12 2012); internal and non-public procedures of financial institutions, *see Cowan v. GE Capital*
 13 *Retail Bank*, No. 13-cv-03935-BLF, 2015 WL 1324848, at *1-3 (N.D. Cal. Mar. 24, 2015);
 14 information about an entity’s confidential “business performance, structure, and finances that
 15 could be used to gain unfair business advantage against them,” *Schwartz v. Cook*, No. 15-cv-
 16 03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016); “highly sensitive information
 17 regarding [an entity’s confidential] product architecture and development,” *Delphix Corp. v.*
 18 *Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014); emails
 19 containing confidential information about an entity’s “business practices, recruitment efforts, and
 20 discussions regarding potential partnerships with other product manufacturers,” *see Koninklijke*
 21 *Philips N.V. v. Elec-Tech International Co., Ltd.*, No. 14-cv-02737-BLF, 2015 WL 581574, at
 22 *1–2 (N.D. Cal. Deb. 10, 2015); and “information regarding non-public recruitment efforts and
 23 business practices” of a party. *See id.* at *2-3.

24 6. Cisco submitted a declaration in support of its Motion to Seal (ECF 530-1) that
 25 identified and attached highlighted copies of material that should be sealed. To the extent that
 26 those exhibits implicate Arista materials, I address those exhibits below. Per the instructions
 27 provided on the Northern District of California’s website, this declaration is drafted so that it does
 28

1 not contain or reveal confidential information, and therefore does not need to be filed under seal.

2 See <http://www.cand.uscourts.gov/ecf/underseal>.

3 7. Cisco's Motion in Limine No. 1: Motion to Exclude Argument and Evidence in
4 Support of Equitable Defenses (ECF 532): Arista does **not** seek to file under seal any of the
5 material highlighted in this document. Arista takes no position to the extent other parties or non-
6 parties may seek to file under seal any of the material highlighted in this document.

7 8. Cisco's Motion in Limine No. 2: Motion to Exclude Evidence Related to "Industry
8 Standard" (ECF 533): Arista does **not** seek to file under seal any of the material highlighted in
9 this document. Arista takes no position to the extent other parties or non-parties may seek to file
10 under seal any of the material highlighted in this document.

11 9. Cisco's Motion in Limine No. 3: Motion to Exclude Untimely Disclosed
12 Witnesses (ECF 534): Arista does **not** seek to file under seal any of the material highlighted in
13 this document. Arista takes no position to the extent other parties or non-parties may seek to file
14 under seal any of the material highlighted in this document.

15 10. Cisco's Motion in Limine No. 4: Motion to Exclude Untimely Disclosed Non-
16 Infringement Theory (ECF 535): Arista does **not** seek to file under seal any of the material
17 highlighted in this document. Arista takes no position to the extent other parties or non-parties
18 may seek to file under seal any of the material highlighted in this document.

19 11. Cisco's Motion in Limine No. 5: Motion to Exclude Testimony of Terry Eger
20 (ECF 536): Arista does **not** seek to file under seal any of the material highlighted in this
21 document. Arista takes no position to the extent other parties or non-parties may seek to file
22 under seal any of the material highlighted in this document.

23 12. Exhibit 2 to the Declaration of Sara Jenkins in Support of Cisco's Motions in
24 Limine ("Jenkins Declaration") (ECF 539-2): This exhibit consists of excerpts from the May 25,
25 2016 deposition transcript of Terry Eger. This exhibit contains confidential Arista business
26 information at pages 28:2–25, 63:17–25, and 103:15–16. There is good cause to seal those
27 portions of this exhibit because they discuss and disclose internal, non-public information
28 regarding Arista business planning and sales operations. See *In re Elec. Arts, Inc.*, 298 F. App'x

1 at 569–70; *Delphix*, 2014 WL 4145520, at *2; *Koninklijke Philips*, 2015 WL 581574, at *1–2; *see*
 2 *also Schwartz*, 2016 WL 1301186, at *2 (discussing the harm that could result by the
 3 dissemination of similar sensitive internal business information to competitors, who would find it
 4 valuable).

5 13. Exhibit 4 to the Jenkins Declaration (ECF 539-4): This exhibit consists of
 6 excerpts from Arista’s March 21, 2016 Responses to Cisco’s Interrogatories 17-21. Arista does
 7 **not** seek to file under seal any of the material in this document. Arista takes no position to the
 8 extent other parties or non-parties may seek to file under seal any portion of this document.

9 14. Exhibit 5 to the Jenkins Declaration (ECF 539-5): This exhibit consists of excerpts
 10 from Arista’s May 27, 2016 Interrogatory Responses. Arista does **not** seek to file under seal any
 11 of the material in this document. Arista takes no position to the extent other parties or non-parties
 12 may seek to file under seal any portion of this document.

13 15. Exhibit 7 to the Jenkins Declaration (ECF 539-7): This exhibit consists of excerpts
 14 from the July 13, 2016 Rebuttal Expert Report and Disclosure of Cate M. Elsten. Page 3 of this
 15 exhibit contains non-public and sensitive business information about Arista’s customer
 16 relationships, which Arista maintains as highly confidential. Arista also believes that its actual
 17 and prospective customers expect that information relating to their purchasing preferences and
 18 transactions is maintained in the utmost confidence. Good cause—and also compelling reasons—
 19 justify sealing these portions of this exhibit. *See Schwartz*, 2016 WL 1301186, at *2 (discussing
 20 the harm that could result by the dissemination of similar sensitive internal business information
 21 to competitors); *Delphix*, 2014 WL 4145520, at *2 (same); *Koninklijke Philips*, 2015 WL 581574,
 22 at *1-3 (same).

23 16. Exhibit 8 to the Jenkins Declaration (ECF 539-8): This exhibit consists of
 24 excerpts from the July 13, 2016 Rebuttal Expert Report and Disclosure of Cate M. Elsten. Good
 25 cause exists to seal **the entirety** of this exhibit. Ms. Elsten’s Rebuttal Report contains non-public
 26 and sensitive business, product pricing, and customer information, as well as sales and revenue
 27 data, and information about actual and prospective customer requirements and preferences
 28 regarding purchasing, all of which Arista maintains as highly confidential. Arista also believes

1 that its actual and prospective customers expect that information relating to their purchasing
 2 preferences and transactions is maintained in the utmost confidence. This report contains
 3 sensitive Arista confidential information interwoven throughout the document. Compelling
 4 reasons—not just good cause—justify sealing the entirety of this exhibit. *See Schwartz*, 2016 WL
 5 1301186, at *2 (discussing the harm that could result by the dissemination of similar sensitive
 6 internal business information to competitors); *Delphix*, 2014 WL 4145520, at *2 (same);
 7 *Koninklijke Philips*, 2015 WL 581574, at *1-3 (same).

8 17. Exhibit 9 to the Jenkins Declaration (ECF 539-9): This exhibit consists of
 9 excerpts from the April 5, 2016 deposition transcript of Mark Edward Berly. Pages 88, 90, 189,
 10 and 238 of this exhibit contain confidential Arista business information. These pages contain
 11 non-public and sensitive business information, including information about customer
 12 requirements and preferences regarding purchasing, that Arista maintains as highly confidential.
 13 Arista also believes that its actual and prospective customers expect that information relating to
 14 their purchasing preferences and transactions is maintained in the utmost confidence. Good
 15 cause—and also compelling reasons—justify sealing these portions of this exhibit. *See Schwartz*,
 16 2016 WL 1301186, at *2 (discussing the harm that could result by the dissemination of similar
 17 sensitive internal business information to competitors); *Delphix*, 2014 WL 4145520, at *2 (same);
 18 *Koninklijke Philips*, 2015 WL 581574, at *1-3 (same).

19 18. Exhibit 10 to the Jenkins Declaration (ECF 539-10): This exhibit consists of
 20 excerpts from the February 25, 2016 deposition transcript of Jayshree Ullal. Arista does **not** seek
 21 to file under seal any of the material in this document. Arista takes no position to the extent other
 22 parties or non-parties may seek to file under seal any portion of this document.

23 19. Exhibit 11 to the Jenkins Declaration (ECF 539-11): This exhibit consists of
 24 excerpts from the June 17, 2016 Rebuttal Expert Report of John R. Black, Jr. Arista does **not** seek
 25 to file under seal any of the material in this document. Arista takes no position to the extent other
 26 parties or non-parties may seek to file under seal any portion of this document.

27 20. Exhibit 14 to the Jenkins Declaration (ECF 539-14): This exhibit consists of
 28 excerpts from the May 26, 2016 deposition transcript of Anshul Sadana. This exhibit contains

1 confidential business information at pages 10:15-12:25. There is good cause to seal those portions
2 of this exhibit because they discuss and disclose internal, non-public information regarding Arista
3 business planning and sales operations. *See In re Elec. Arts, Inc.*, 298 F. App'x at 569–70;
4 *Delphix*, 2014 WL 4145520, at *2; *Koninklijke Philips*, 2015 WL 581574, at *1–2; *see also*
5 *Schwartz*, 2016 WL 1301186, at *2 (discussing the harm that could result by the dissemination of
6 similar sensitive internal business information to competitors, who would find it valuable).

7 Executed this 20th day of September 2016, at San Francisco, California.

8 I declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct.

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11
12 /s/ Ryan K. Wong
13 RYAN K. WONG
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